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15 *Attorneys for the Plaintiffs*

16  
17 **IN THE UNITED STATES DISTRICT COURT**  
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 MARLON H. CRYER, individually and  
as representative of a class of  
20 similarly situated persons,

21 Plaintiffs,

23 FRANKLIN RESOURCES, INC., et al.,

24 Defendants.

) Case No. 4:16-cv-4265-CW  
) **(lead case consolidated with)**  
) Case No. 3:17-cv-6409-CW  
)

) **DECLARATION OF GREGORY Y.**  
) **PORTER IN SUPPORT OF MOTION**  
) **FOR ATTORNEYS' FEES**  
)

) Judge: Hon. Claudia Wilkens  
) Courtroom: 2, 4<sup>th</sup> Floor

1 I, Gregory Y. Porter, declare as follows:

2 1. I am a partner at the law firm Bailey & Glasser LLP ("Bailey & Glasser"). Bailey &  
3 Glasser is co-lead counsel for the certified class in this action. I submit this declaration in  
4 support of Plaintiff's Application for Attorneys' Fees, Reimbursement of Expenses and  
5 Named Plaintiff Incentive Awards. If called as a witness, I would and could competently  
6 testify to these facts.  
7

8 2. I have been actively involved in the prosecution of this Action, am familiar with its  
9 proceedings, and have personal knowledge of the matters set forth herein based on my active  
10 supervision and participation in all material aspects of the Actions.  
11

12 3. As outlined in Plaintiff's Motion for Class Certification, Dkt. 53, I and my firm have  
13 extensive experience in class action litigation and particular experience in class action  
14 litigation under the Employee Retirement Income Security Act of 1974 ("ERISA").

15 4. To my knowledge, nineteen other class actions have been filed since the enactment of  
16 ERISA alleging fiduciary breaches from the selection or continued inclusion of proprietary  
17 funds in a 401(k) plan. Exhibit A to this declaration identifies each action of which I am aware.  
18

19 5. Exhibit A also identifies the gross settlement amount and the approximate number of  
20 class members identified in court filings for each case, and averages those to calculate a gross  
21 average recovery per class member.

22 6. My associate, Mark Boyko, and I have extensive experience representing plaintiffs in  
23 this narrow area of law. Exhibit A to my declaration also identifies those settlements in which  
24 Mr. Boyko or I were attorneys of record for the plaintiffs.  
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7. Class Counsel selected the Angeion Group as the Settlement Administrator after reviewing four competitive bids. In the past two years, Bailey Glasser has not retained the Angeion Group as an administrator for any class action settlement.

8. In preparation for filing this motion, I reviewed Bailey Glasser's time and out-of-pocket expenses in connection with the current litigation, as well as the time and expenses of local counsel, Joseph Creitz, of the law firm Creitz & Serebin LLP.

9. The information in this declaration regarding my firm's time and expenses, as well as that of Mr. Creitz, is taken from contemporaneous time and expense printouts prepared and maintained by the firms in the ordinary course of business. Time reflected in the lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. Class Counsel prosecuted this case on a wholly contingent basis, and has received no compensation to date for their litigation expenses or time.

10. Bailey Glasser devoted a total of 4,454.3 hours to the prosecution of this litigation from inception through July 15, 2019, excluding time spent on the fee petition and supporting materials. The total lodestar amount for attorney time based on the firm's current rates is \$2,111,250. A breakdown of Bailey Glasser's lodestar as of July 15, 2019, as well as the lodestar of Mr. Creitz, is as follows:

Name	Years of Practice	Rate	Hours	Lodestar
Greg Porter	23	\$750	850	\$347,055
Ryan Jenny	20	\$600	30.1	\$18,060
Tillman Breckenridge	18	\$600	33.2	\$19,920
Mark Boyko	15	\$600	2,210.9	\$1,326,540
Alex Serber	2	\$300	781.4	\$234,420
Melissa Kestner-Clay	Sr. Paralegal	\$225	362.8	\$81,630
Sue Polston	Sr. Paralegal	\$225	606.3	\$121,260
Annie Dimmick	Legal Assistant	\$150	21.3	\$3,195
Joseph Creitz	27	\$750	41.9	\$31,425
<b>Total Bailey Glasser</b>			<b>4,454.3</b>	<b>\$2,111,250</b>
<b>Total Creitz &amp; Serebin</b>			<b>41.9</b>	<b>\$31,425</b>

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11. Attached hereto as Exhibit B is a chart that breaks down the total hours spent by each attorney by the areas and tasks where their time was spent in the case. In addition, Exhibit B shows that under the hourly rates approved as market rates for 401(k) proprietary fund class ERISA litigation in *Krueger v. Ameriprise Fin.*, 2015 WL 4246879 (D. Minn. July 13, 2015), Bailey Glasser's lodestar would total \$3,966,143 and Mr. Creitz' lodestar would total \$35,615.

12. We anticipate, based on prior experience, spending a minimum of 30 additional hours in order to communicate with class members, attend the Fairness Hearing, and monitor Defendants' compliance with the settlement. The time records above to not include future time spent on this case.

13. The time records also do not include work performed to date on this Motion or work performed by summer associates or by attorneys or paralegals who billed fewer than five hours on this litigation. None of the expenses sought to be reimbursed include any expenses incurred relating to seeking reasonable attorneys' fees and expenses in this matter.

14. Biographical details for the Bailey Glasser attorneys who worked on this case are included in the firm's resume, which was filed in connection with Plaintiff's Motion for Class Certification.

15. The hourly rates show in paragraph 10 are Bailey Glasser's normal rates for ERISA litigation. Bailey Glasser's ERISA work is a specialized national practice; we do not charge differential rates based on the location where a lawsuit is filed. Courts have approved Bailey Glasser's fees in class actions litigated all over the country, most recently in *Schultz v. Edward D. Jones & Co., L.P.*, 16-cv-1346, Dkt. 113 (E.D. Mo. April 22, 2019) and *Johnson v. Providence Health & Services*, 17-cv-1779, Dkt. 69 (W.D. Wash. July 9, 2019).

16. To date, Bailey Glasser's out-of-pocket expenses for this litigation are \$296,240.61, broken down as follows:

EXPENSE DESCRIPTION	AMOUNT
Court costs ( <i>pro hac vice</i> fees)	\$4,154.25
Meals, Hotels & Transportation	\$65,153.47
Litigation Fund (Experts, Mediation and Data Storage)	\$256,192.25
Transcripts	\$24,913.26
Postage, copying and delivery	\$3,175.24
PACER and Westlaw	\$6,260.93
<b>TOTAL EXPENSES:</b>	<b>\$359,859.40</b>

17. In addition, Mr. Creitz has incurred filing fees of \$400 and service of process costs of \$37.95. These expenses include \$5,000 in estimated travel expenses related to the Fairness Hearing and represent costs that would normally be charged to a fee-paying client in the private legal marketplace.

18. The expenses pertaining to this case are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records and other documents, and are an accurate record of the expenses incurred in the prosecution of this matter.

19. In this matter, the representation agreements signed by Plaintiffs Marlon Cryer and Nelly Fernandez provided for payment of attorneys' fees up to one-third (33.33%) of the gross value of any monetary award obtained after the litigation costs advanced by the attorneys are deducted.



# EXHIBIT A

Case	Recovery	Class Members	Class Member Ave. Gross Recovery	Cryer Attorneys Represented Plaintiffs
<i>Bilewicz v. FMR Co.</i> , Nos. 13-cv-10636 and 14-cv-10035 (D. Mass.)	\$12,000,000	92,498	\$129.73	X
<i>Dennard v. Transamerica Corp.</i> , No. 15-cv-30 (N.D. Iowa)	\$3,800,000	25,581	\$148.55	X
<i>Figas v. Wells Fargo</i> , No. 08-cv-4546 (D. Minn.)	\$17,500,000	230,292	\$75.99	X
<i>Gordan v. Mass. Mutual Life Ins.</i> , No. 13-cv-30184 (D. Mass.)	\$30,900,000	32,000	\$965.63	X
<i>Kanawi v. Bechtel Corp.</i> , No. 06-cv-5566 (N.D. Cal.)	\$18,500,000	42,733	\$432.92	X
<i>Krueger v. Ameriprise Fin.</i> , No. 11-cv-2781 (D. Minn.)	\$27,500,000	46,460	\$591.91	X
<i>Leber v. Citigroup 401(k) Plan Inv. Comm.</i> , No. 07-cv-9329 (S.D.N.Y.)	\$6,900,000	252,360	\$27.34	X
<i>Main v. American Airlines, Inc.</i> , 16-cv-473 (N.D. Tex.)	\$22,000,000	103,456	\$212.65	
<i>Mehling v. New York Life Ins. Co.</i> , No. 99-cv-5417 (E.D. Penn.)	\$14,000,000	45,643	\$306.73	
<i>Moreno v. Deutsche Bank Am. Holding Corp.</i> , No. 15-cv-9936 (S.D.N.Y.)	\$14,000,000	36,081	\$388.02	
<i>Nolte v. Cigna Corp.</i> , No. 07-cv-2046 (C.D.Ill.)	\$35,000,000	202,459	\$172.87	X
<i>Richards-Donald v. Teachers Insurance and Annuity Association of Amer.</i> , No. 15-cv-8040 (S.D. N.Y.)	\$5,000,000	26,442	\$189.09	X
<i>Sims v. BB&amp;T Corp.</i> , No. 15-cv-732 (M.D.N.C.)	\$24,000,000	72,632	\$330.43	
<i>Urakhchin v. Allianz Asset Mgmt. of Ameri., LP</i> , No. 15-cv-1614 (C.D. Cal.)	\$12,000,000	5,810	\$2,065.40	
<i>Will v. General Dynamics Corp.</i> , No. 06-cv-698 (S.D. Ill.)	\$15,150,000	156,799	\$96.62	X
<i>Velazquez v. Massachusetts Financial Services Co.</i> , No. 17-cv-11249 (D. Mass)	\$6,875,000	3,000	\$2,291.67	
<i>Price v. Eaton Vance Corp.</i> , 18-cv-12098 (D. Mass)	\$3,450,000	2,600	\$1,326.92	
<i>Pease v. Jackson National Life Ins. Co.</i> , No. 17-cv-284 (W.D. Mich.)	\$4,500,000	11,454	\$392.88	
<i>Schapker v. Waddell &amp; Reed Financial Inc.</i> , No. 17-cv-2365 (D. Kan.)	\$4,875,000	4,580	\$1,064.41	
<b><i>Cryer v. Franklin</i></b>	<b>\$26,750,000</b>	<b>8,629</b>	<b>\$3,100.01</b>	
<b>Averages of Proprietary Fund Settlements excluding <i>Cryer v. Franklin</i></b>	<b>\$14,628,947</b>	<b>73,309</b>	<b>\$199.55</b>	